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Vice President of Public Policy

November 13, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Reciprocal Compensation for Calls to Internet Service Providers
CC Docket 96-98
Written Ex Parte Communication

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Chairman Kennard:

I am writing in response to Bell Atlantic's November 4, 1998 letter to you regarding compensation for calls to Internet service providers ("ISPs"). While Bell Atlantic continues to find increasingly colorful ways to describe its position, it has yet to come to grips with the most fundamental issue in this proceeding, that is, how competitive local exchange carriers ("CLECs") that terminate traffic to ISPs that originates with Bell Atlantic's customers will be compensated for performing that function. Although Bell Atlantic was one of the most vocal proponents of the view that carriers must be compensated for the cost of terminating traffic, it remains silent on how that question should be answered for traffic directed to ISPs. Indeed, Bell Atlantic's silence suggests strongly that it hopes to avoid the issue of compensation for actual costs entirely. The Commission must not allow Bell Atlantic and other incumbent LECs to obscure this issue.

When the Commission was implementing the interconnection provisions of the 1996 Act, Bell Atlantic and other incumbent LECs insisted that there are significant costs to terminating traffic routed to them by other carriers. They argued strenuously against "bill and keep" and similar arrangements that would eliminate monetary compensation for call termination.^{1/} The incumbent LECs even argued that any rule that eliminated monetary

^{1/} See, e.g., Comments of Bell Atlantic, CC Docket No. 96-98, filed May 16, 1996, at 41-42 (bill and keep compensation is inappropriate because it is not a reasonable approximation of additional costs of transport and termination), 43 (necessary to recover costs of tandem switching and transport for calls routed through tandem); Comments of Ameritech, CC Docket No. 96-98, filed May 16, 1996, at 78-79 (there are costs associated with termination); Comments of Pacific Telesis, CC Docket No. 96-98, filed May 16, 1996, at 51-52 (same); Comments of GTE, CC Docket No. 96-98, filed May 16, 1996, at 56-58 (same);

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compensation would result in a taking.^{2/} In light of these claims, the Commission's *Local Competition Order* made an official determination that there were indeed network costs associated with local traffic termination, and adopted cost-based proxies for end office and tandem termination of traffic. The Commission was explicit that both incumbent LEC and CLEC networks incurred costs to terminate each other's calls.

Now, under the guise of "competitive neutrality," Bell Atlantic would have the Commission ignore its prior determination and adopt the view that CLECs are not entitled to recover their costs of terminating the traffic from incumbent LEC customers to ISPs.^{3/} There is nothing "neutral" about this proposal because it would impose the costs of terminating Internet-bound traffic on carriers without giving them any way to recover those costs.^{4/} Although Bell Atlantic cloaks its rhetoric in terms of letting the states determine the meaning of interconnection agreements, there can be no mistaking Bell Atlantic's intent to avoid

Comments of BellSouth, CC Docket No. 96-98, filed May 16, 1996, at 73-74 (same); *see also* Comments of Bell Atlantic, CC Docket No. 95-185, filed March 4, 1996, at 6 (interim bill and keep compensation arrangements are unworkable because interconnection costs are not zero).

2/ *See* Comments of Bell Atlantic, CC Docket No. 96-98, filed May 16, 1996, at 41-42 (bill and keep arrangements violate the Fifth Amendment prohibition against uncompensated takings); Comments of Cincinnati Bell, CC Docket No. 96-98, filed May 16, 1996, at 39 n. 71 (same); Comments of U S West, CC Docket No. 96-98, filed May 16, 1996, at 70-71 (same); Comments of GTE, CC Docket No. 96-98, filed May 16, 1996, at 57-58 (same); Comments of BellSouth, CC Docket No. 96-98, filed May 16, 1996, at 74-75 (same).

3/ Neither Bell Atlantic nor any other party has provided any evidence that the costs of terminating traffic bound for Internet service providers are any different than the costs of terminating traffic to other customers. Given that the functionalities associated with terminating a call to an Internet service provider are the same as for any other local call, it is evident that there should not be any meaningful cost differences.

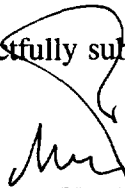
4/ Bell Atlantic's suggestion that those costs be recovered in the charges to Internet service providers is absurd. Under the same policies that Bell Atlantic cites in its letter, carriers must provide service to ISPs under the same terms and conditions as any other end user. Thus, carriers do not have the ability to recover the additional costs of terminating Internet traffic from their ISP customers. Moreover, as the Commission has recognized in other contexts, the ISPs are not causing the termination costs; rather, the incumbent LEC customers who originate the calls are the cost causers.

Hon. William E. Kennard
November 13, 1998
Page 3

making any payments to other carriers for terminating its traffic. (That is, of course, the position Bell Atlantic has taken in every single state proceeding on this issue in its region.)

If the incumbent LECs were right before, they cannot be right now. If, as the incumbent LECs repeatedly have claimed, there are costs of terminating traffic, the Commission cannot require CLECs to bear those costs for calls originated by incumbent LEC customers without compensation any more than it could require incumbent LECs to bear the costs of calls originated by CLEC customers. It does not matter whether calls to ISPs are categorized as intrastate or interstate because the costs remain the same. Moreover, the Commission cannot leave CLECs hanging by deciding that Internet-bound traffic is interstate without also putting a compensation system in place. Any failure to require immediate and ongoing compensation will merely encourage the incumbent LECs to continue to withhold payments to CLECs for, ironically, the very costs that the incumbent LECs themselves have insisted must be recovered.

Respectfully submitted,



Alexander V. Netchvolodoff

cc: Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Harold Furchtgott-Roth
Commissioner Gloria Tristani